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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/253,014	02/19/1999	THOMAS G. WOOLSTON	55422.000005	5135

20985 7590 09/10/2002

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EXAMINER

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ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 09/10/2002

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 35

Application Number: 09/253,014
Filing Date: February 19, 1999
Appellant(s): WOOLSTON, THOMAS G.

John C. Phillips
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 4/15/02.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct.

The changes are as follows:

A. Whether claims 11,13,16,18-23,33,35,39-41,43-45,49-50,54,55,64-70,74-85,90,93-96,133-146,148-218 are unpatentable under 36 U.S.C. 103(a) as being unpatentable over Salmon et al., patent number 5,592,375 in view of Sharp "From Army Knives to Gold Coins, Collectors Attend 'On-Line' Auction" Memphis Business Journal v.8, n.10, p. 10 7/86 further in view of Wright et al., "Is it Time to Travel the Auction Route?" Real Estate Today, v. 24, n. 6, p. 46(5).

B. Whether claims 148-151, 154-157, 160-163, 166-169, 172-175, 178-181, 184-187, 190-193, 196-199, 202-205, 213-216 are unpatentable under 35 U.S.C. 112, first

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paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 82-83, 94-96, and 145 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 66-67 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 148-152, 154-158, 160-164, 166-170, 172-176, 178-182, 184-188, 190-194, 196-200, 202-206, 213-217 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,592,375

Salmon et al.

1-1997

Sharp, Amy, "From Army Knives to Gold Coins, Collectors Attend 'On-Line' Auctions"

Memphis Business Journal, v. 8, n.10 (July 28 1986) p. 10

Wright et al., "Is it Time to Travel the Auction Route?" Real Estate Today, v. 24, n. 6, (July 1991) p. 46(5)

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 11,13,16,18-23,33,35,39-41,43-45,49-50,54-55,64-70,74-85,90,93-96,133-146,148-218 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 27.

Claims 148-151,154-157,160-163,166-169,172-175,178-181,184-187,190-193,196-199,202-205,213-216 are rejected under 35 U.S.C. 112, first paragraph. This rejection is set forth in prior Office Action, Paper No. 27. The final rejection is reproduced below:

Claims 148-152, 154-158, 160-164,166-170,172-176,178-182, 184-188,190-194,196-200, 202-206, 213-217 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Cited portion of the specification does not clearly provide support for the seller inputting auction duration, start/end time, immediate start, or indication that the auction is to be invoked by the seller manually. Please provide specific portions of the specification which support these new claims or cancel above claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

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to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11,13, 16,18-23, 33, 35, 39-41, 43-45,49-50,54, 55, 64-70,74-85,90, 93-96, 133-146,148-218 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al., patent number 5,592,375 in view of Sharp "From Army Knives to Gold Coins, Collectors Attend 'On-Line' Auction" Memphis Business Journal v.8, n.10 p.10 7/86 further in view of Wright et al., "Is it Time to Travel the Auction Route?" Real Estate Today, v. 24, no.6, p.46(5).

Salmon teaches a method for conducting sales on the Internet comprising: receiving at a communication handler program executing on a host computer information from a seller corresponding to an item for sale, the information received from the seller including a designation of a category (col. 1, lines 15-45, col. 2, line 20, 25-55, col. 6, lines 25-45, col. 7, lines 5-25, col. 14, lines 1-5,20-35, col. 15, lines 14-20); processing the received information into a presentation format by a database-to-presentation format formatting program the presentation format including an indication of the category of the item (col. 7, lines 32-40 fig.1, col. 4, lines 5-40); and a tracking identifier or unique item identifier (product ID); receiving a page of information including category designation (fig. 7g). Salmon also teaches the information received from a seller further comprises an item subcategory (figs. 4p, 4q); information received from a seller comprises a verbal description or a graphical description or both (col. 2, lines 30-35).

Sharp teaches an on-line auction which accepts messages concerning collectibles for sale and asking price or reserve price and bids from participants for items where submitting payment information is inherent since this is at minimum a requirement to offer a legitimate bid, subjective information including authenticity, sellers

and buyers register including identity information (inherent for the security check performed) before auction, and inherently seller financial information since this is necessary for at least registration fees and commission fees and monthly charges (whole document). It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the online auctioning as described in Sharp as a replacement for the sales in Salmon since the sellers have a possibility of receiving more money than the asking price or base price for the items thereby providing incentive to users to choose auctioning over brokering. Alternatively it would have been obvious to have used the buyers and sellers interface of Salmon in the system of Sharp since the system of Salmon would have provided an automated system for inputting information into the database of Sharp and would have provided a more enhanced auctioning system by providing users with more information in terms of graphics/multimedia thereby promoting use by the public.

Wright teaches accepting input relating to scheduling an auction (sellers set the day of selling- page 1). Wright also teaches the seller includes a price for the item (minimum-bid or reserve) and advertising (More Details to Plan section). It would have been obvious to one having ordinary skill in the art at the time of the invention to have allowed the seller to set the scheduling of the auction and conducted the auction of the item based on the schedule in the systems of Salmon and Sharp since allowing the seller to set the schedule would have offered control to the seller and accommodate the seller's needs (for example, for quick cash or credit to account) thereby providing incentive over the sale of Salmon or lack of seller control of Sharp. It also would have been obvious to have the seller indicate if advertising is offered since advertising would have generated interest in the item and auction as suggested by Wright. It also would have been obvious to have advertised on a main web page or a welcome page since

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these pages are more likely to be seen by more people. It also would have been obvious to have included a specified time period or duration or start and end time or even an immediate auction since this would also have accommodated at least the needs of the seller thereby encouraging use over Salmon and Sharp. While the term "Internet" does not appear in the references, it would have been obvious to have used the Internet since this would have provided convenience and accessibility to many users over the world (as opposed to a closed or dedicated network) thereby increasing the customer base and since Salmon includes use of an Ethernet network which supports TCP/IP protocols necessary for the Internet.

It also would have been obvious to have the presentation format comprising a hypertext markup language format since this is well known in the art for linking information as is desired by Salmon (col. 2, lines 3-8). It also would have been obvious to have provided to the Internet participant instructions for sending payment information since this would have been necessary to complete the transaction. It also would have been obvious to one having ordinary skill to have opened and automatically closed the auction to participants since this is well known in the art at least for setting a beginning and ending time of the auction for the participants. It also would have been obvious to have implemented a world-wide-web interface since this was well known in the art for browsing the Internet. It also would have been obvious to have implemented a packet-switched network for the auctioning system since this is well known in the art as a fast and efficient mode of transmission which would have benefited the auctioning system as described in Sharp at least to quickly notify participants of the most recent bids. It also would have been obvious to have refused bids after a closing time or after a higher bid has been received since these are well known in the auctioning art for finality of the auction itself and finality of sales. It also would have been obvious to have

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notified the seller in response to receiving information and to have notified bidders of bid acceptance, including by E-mail, since notification would have assured the sellers and buyers of completed transmissions and would have eliminated repeat messages resulting from the users uncertainty of transmissions. It also would have been obvious to have advertised on the medium used by participants in Sharp and Salmon since this would have notified users and encouraged participation and would have been obvious to have an indication by the seller for permission to advertise the item since this also would have increased interest in the auction and to have a third party advertise in order to reduce the costs to the participants. It also would have been obvious to keep the asking or reserve price undisclosed since this would have been in the best interests of the seller to obtain the best price possible.

Claims 12,14, 15, 17, 24, 25, 34,36-38, 42, 46-48, 51-53, 71-73, 86-89, 98,99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon in view of Sharp and Wright et al. as above further in view of "Internet Providers Take Next Step Toward Electronic Commerce".

The article teaches passing payment information from a host computer to an external clearinghouse and receiving at a host computer a response that payment has cleared (automated clearinghouse payment processing services to businesses), receiving payment information via a worldwide web page server (allow marketers on the www to accept consumers' Visa, MasterCard cards online); inherently debiting an account identified by the payment information and clearing credit card transactions since these are necessary to complete the transaction (either credit card, checking accounts). It would have been obvious to one having ordinary skill in the art at the time of the invention to have implemented the payment system as described in the article in the systems of Salmon and Sharp since the payment processing would have been

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necessary to implement and complete the transactions described in Salmon and Sharp. Also, it would have been obvious to have verification and assent to terms of sale before processing the bid since this would have deterred fraudulent behavior of the participants and would have been a condition of the registration of Sharp.

Claims 85,91,92, 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon in view of Sharp and Wright et al as above further in view of Debenedictis et al., patent number 5,625,823.

Debenedictis teaches indicating an opening bid and current bid and notifying a user that a bid has been accepted (fig. 28, col. 28, line 60-col. 29, line 30). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the information of the interface of Debenedictis in the systems of Salmon and Sharp since this would have provided users with the most current information necessary for an online auction.

Claim 147 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon in view of Sharp and Wright et al. as above further in view of Keithley et al, patent number 5,584,025.

Keithley et al. teaches acquiring and displaying information or use in the sale of goods or services which includes advertising information (by third party col. 5, lines 35-40,45-55, col. 12, lines 15-22) product tracking identifier (property identifier) and uses a UNIX daemon in its communication handler program (abstract, col. 12, lines 20-40). It would have been obvious to one having ordinary skill in the art at the time of the invention to have used UNIX as in Keithley et al in the systems of Salmon and Sharp since the systems of Salmon and Sharp do not limit the operating systems and

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since UNIX handles the type of information used and the transactions performed in the systems of Salmon and Sharp.

(11) *Response to Argument*

The appellant argues that the motivation to combine references made in the final action is based on subjective belief and unknown authority and is improper. However, the motivations made in the final office action establish obviousness by showing some objective teaching either in the prior art or that knowledge generally available to one of ordinary skill in the art at the time of the invention which would lead that individual to combine the relevant teachings of the art applied. For example, the appellant argues that the motivation to combine the auctioning of Sharp with the sales of Salmon (because the sellers have a possibility of receiving more money than the asking price or base price for the items thereby providing incentive to users to choose auctioning over brokering) is improper because auctioning is not per se superior to static price selling but rather both have their own advantages and disadvantages. The examiner agrees that both sales and auctions have their own advantages and disadvantages, however, for obviousness purposes of the rejection, the possibility of receiving more money than the asking price (or base price) is a reasonable motivation for a seller to choose an auction over the brokering of Salmon despite the risks involved. The motivation that a seller has a possibility of receiving more money for an item over the asking price is within the knowledge generally available to one of ordinary skill in the art as the nature of an auction. This is supported by Wright which states "[s]ellers need to know that at times the competition created through an auction will fetch a higher sales price than

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could be achieved in any other way" (p.1 of copy). With respect to the arguments made concerning the risk of an auction price being less than the price of the static priced market, the risk is lessened by providing a reserve price where the seller is not obligated to sell the item if a bid falls below the reserve price. Given that one does not have to sell an item if a certain price is not met, a seller would then be motivated to auction the item rather than sell the item in a static priced market.

Still further, Salmon teaches "a computer-based system to facilitate any transaction where review of diverse information is a part of the buyer's decision-making process" (col. 1, lines 15-21) but does not teach the specifics of the sales interface or sale transaction. Since suggestion for *any transaction* exists in Salmon, it follows that one having ordinary skill would be motivated to look to other technologies available in order to complete the purchase transaction taught by Salmon. Given the teachings of the types of items to be purchased, including real estate, automobiles, or other goods (col. 2, lines 15-25), one having ordinary skill in the art would recognize that auctions are a well known means of selling these types of items (such as property as discussed in Wright, whole document, and items such as coins, collectables, etc. as in Sharp, whole document) and offer certain features over a traditional static priced market such as a possible higher sales price for the seller and/or a quick sale as evidenced by Wright (at least p. 1 of copy "[s]ellers need to know that at times the competition created through an auction will fetch a higher sales price than could be achieved in any other way" and "[a]lmost any type of property will lend itself to auction, but your first consideration should be how fast sellers need to sell their property...need to sell quickly

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and will take the highest competitive offer on the sale day, consider auctions.”) One would then look to Sharp for the technology available, an on-line auction where the auction is “accessible to anyone with a computer terminal and a modem,” to combine with the posting and searching technology of Salmon. Thus, motivation to combine has been provided with either suggestion in the references themselves, or in the knowledge generally available to one of ordinary skill in the art and as evidenced by the art applied.

Concerning the alternative motivation to combine, (obvious to have used the buyers and sellers interface of Salmon in the system of Sharp since the system of Salmon would have provided an automated system for inputting information into the database of Sharp and would have provided a more enhanced auctioning system by providing users with more information in terms of graphics/multimedia thereby promoting use by the public), the appellant argues that hindsight reconstruction was applied. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this alternative case, the motivation takes into account knowledge which was within the level of ordinary skill at the time the invention was made as shown by the teachings of Salmon. Salmon teaches the invention “allows information in a number of

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forms to be submitted by the seller, compiled in a database and reviewed by the buyer with the assistance of an interactive, expert system based, networked computer system." (col. 1, lines 20-25) and includes an automated system for inputting information into the database (see at least col. 2, lines 25-40). The advantages of Salmon are at least listed in col. 2, lines 25-55 and include "information is accessible in various media so that a more enriched review can begin without delay" where images, audio, and video provide a more complete description over a text message alone as described by Sharp. It follows that buyers would prefer as much information about an item as possible, in particular an image or video, in deciding upon purchase of an item, in which case, users would prefer the multimedia and search capabilities and system of Salmon over the text interface of Sharp.

The appellant also argues that hindsight reconstruction was applied with the addition of Wright. However, the motivation takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made. For example, Wright teaches at least one motivating factor of choosing an auction is allowing the seller to set the schedule. "Almost any type of property will lend itself to auction, but your first consideration should be how fast sellers need to sell their property. If they need to sell quickly and will take the highest competitive offer on the sale day, consider auctions. The alternatives involve promoting property on an ongoing basis, dealing with buyers one at a time (and on their schedule), and waiting for the right buyers to come along. With an auction, sellers can set the day they'd like their property to sell" (Wright, p. 1 of copy).

The appellant's comments concerning the examiner's comments directed to subjective information are directed toward dependent claims of Group III and are addressed below.

The appellant also argues that the inherency statements made in the final rejection are incorrect. However, given the broadest reasonable interpretation, payment information can include any type of payment information and does not necessarily include specific account information as in the dependent claims. The appellant argues that most online auction systems do not require bidders to submit payment information and points to ePier.com as an example. However, inherency did not rely on other online auctions such as ePier.com. Instead, inherency was shown by the teaching of Sharp which teaches that all that is required is a computer and a modem and a requirement of payment for registration fee, monthly charge, and commission. Since all that is required to access the network is a computer and modem, it is inherent that this is the means used to submit payment information of any type, including an indication of method of payment, associated with a bid. Further, receiving payment information at a host computer, line 19 of claim 11, and not necessarily the same host computer as in line 17, is necessary for completing the sale and record of sale.

The comments concerning the inherent seller financial information on p. 14 are directed to dependent claims which stand or fall with the independent claims. However, again, inherency was not dependent upon ePier.com. Also, the appellants alternative of submitting a cashier's check or money order would also satisfy the inherency of submitting payment information since this necessarily would be in response to providing

to the internet participant instructions for sending payment information to pay for the auctioned item as claimed in at least claim 20 and since it would be necessary to process the check at a host computer (bank computer or clearinghouse).

As shown above, the motivations made in the 35 U.S.C. 103 rejections are supported by the art applied and the rejection should be sustained.

Comments made concerning the official notice statements are directed to dependent claims which stand or fall with the independent claims.

The appellant argues that Salmon does not disclose or suggest conducting auctions on the internet. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, as shown above, the focus of Salmon need not be on electronic commerce to be considered for eligibility for an obviousness type of rejection, since one having ordinary skill in the art would look to existing electronic commerce systems in order to complete the transactions intended by Salmon (col. 1, lines 15-21, col. 2, lines 15-20, col. 15, lines 15-20). It is established that Salmon need not suggest an on-line auction to be considered for combination in a rejection -- *In re Sheckler*, 168 USPQ 716 (CCPA 1971) "It is not necessary that a reference actually suggest changes or possible improvements which applicant made." See also *Lamont v. Berguer*, 7 USPQ2d 1580 (BdPatApp&Int 1988) "Section 103 requires us to presume

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that the artisan has full knowledge of the prior art in his field of endeavor and the ability to select and utilize knowledge from analogous arts.”

Again, given the suggestion of use with any transaction and of the types of items to be purchased, including real estate, automobiles, or other goods (col. 2, lines 15-25), one having ordinary skill in the art would recognize, or at least reasonably infer, that auctions are a well known means of selling items (such as property as discussed in Wright, whole document, and items such as coins, collectables, etc. as in Sharp, whole document) and offer certain features over a traditional static priced market as discussed above. See also, *In re Shepard*, 138 USPQ 148 (CCPA 1963) “In considering disclosure of reference patent, it is pertinent to point out not only specific teachings of patent but also the reasonable inferences which one skilled in the art would logically draw therefrom.” *In re Jacoby*, 135 USPQ 317 (CCPA 1962) “Problem cannot be approached on basis that workers in the art would know only what they could read in references; those skilled in radiator art must be presumed to know something about radiators apart from what references disclose.”

The appellant also argues that Sharp fails to disclose conducting auctions on the internet, however, as discussed in the final rejection suggestion for use on the internet exists with the combination of Salmon and Sharp where Sharp clearly suggests an on-line auction over a combination of networks (customer network to the database and transfer of messages to the network) which satisfies the most basic definition of the internet (a combination of networks) and where Salmon teaches use of the Ethernet wide area network (col. 14, lines 20-35) which supports TCP/IP and where suggestion

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exists as by applications such as email (col. 14, lines 39-41) and providing links to allow navigation (col. 2, lines 5-10) as well as a teaching of a combination of networks (fig. 1, seller network connection to server 200, col. 14, lines 20-25, and connection to buyer network, 500, LAN or WAN to server).

The appellant argues that the brokering of Salmon is limited to the brokering of information and does not relate to brokering in the sense of "acting as a commercial exchange to facilitate financial transaction relating to the sale of goods or services." However, as discussed above, Salmon teaches "[t]he invention provides a computer-based system to facilitate any transaction where review of diverse information is a part of the buyer's decision-making process" where "[t]his system can be used in a variety of transaction applications which include, but are not limited to: [p]urchase ... of real estate...[p]urchase ... of consumer goods or services" and where the system is used to "broker transactions of consumer goods and services" (col. 1, lines 15-21, col. 2, lines 15-20, col. 15, lines 15-20).

The appellant argues that a disincentive exists against combining Salmon and Sharp since the combination would be cost-prohibitive and would overly complicate the system. However, the cost of implementing a system or changes to a system does not necessarily teach away from the obviousness or desire of implementing the system or change. Using the appellant's logic of cost being the sole decision factor of developing and implementing a system, many significant inventions would not have been pursued, such as in the space program. Further, it has been established that economic reasons is not the same as saying that it could not be done for 103 purposes. *Orthopedic*

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Equipment Company, Inc. et al. v. United States, 217 USPQ 193 (CAFC 1983) "Fact that two disclosed apparatuses would not be combined by businessmen for economic reasons is not the same as saying that it could not be done because skilled persons in the art felt that there was some technological incompatibility that prevented their combination; only latter fact is telling on nonobviousness issue." Still further, it is not clear that the combination would be cost-prohibitive as an automated system would help, at least, to alleviate delays of manual entry by the system operator(s) should the demand be high. Such delays could result in a significant loss of business. Also, it is not clear that commission fees would necessarily be worse with the use of the automated system or Salmon. In any case, one having ordinary skill in the art would look to the specific advantages listed in Salmon as to why one would adopt the system of Salmon (see at least col. 2, lines 15-55). Thus, there is no "teaching away" as argued by the appellant, but a direct teaching of why one would use the database and system of Salmon.

The appellant also argues that Wright does not teach a computer-implemented method or system for conducting auctions on the Internet. However, as shown above, the combination of Salmon and Sharp at least teach that it is obvious to conduct auctions on the internet. Once it is established that conducting auctions on a network would satisfy the transaction of Salmon, one would look to conditions and practices associated with conducting auctions in order to have a successful auction. As taught by Wright, one advantage of an auction is the ability to quickly sell and buy as discussed above (Wright p. 1 of copy). Since Wright teaches the "first consideration should be

how fast sellers need to sell their property” in an auction, one would have been motivated to include the scheduling in the system of Salmon/Sharp. Providing control over scheduling to the seller then honors this “first consideration.”

Comments made to the remaining references on p. 21 are directed to dependent claims which stand or fall with the independent claims of Group I.

The appellant argues, for the claims of Group II, that Wright does not teach seller provided information includes an indication from the seller whether the item offered is to be advertised. However, Wright teaches “[o]nce the contract details have been established, *you* and the auction company can begin to promote the property” (emphasis added) where promotion includes advertising as described later in the “More Details to Plan” section. Again, since an auction is an obvious method of completing the transaction as discussed above, one would look to the conditions and features of an auction for inclusion of the system of Salmon/Sharp. As taught by Wright, the seller is not without action in promoting the sale of the property, -- “you and the auction company”. The combination of the systems of Salmon/Sharp would then allow for an input from the seller as to whether the item offered is to be advertised, and further the type of promotion, by brochures, advertising, and/or announcements at the sale (which would include announcements on a web page when considering the combination of references) would also be a reasonable suggestion. Thus, when the references are considered in combination and in what they teach as a whole, the obviousness rejection of the claim should be sustained.

Concerning the claims of Group III, the appellant argues that neither Salmon nor Sharp teach including a verbal description providing subjective information about the item to be auctioned, regarding condition, authenticity or the like. As stated in the final rejection, the combination of Salmon and Sharp teach this feature. Specifically, Salmon teaches accepting audio information from the seller (see at least, col. 2, lines 30-35, and col. 6, line 15) and Sharp teaches providing subjective information (at least authenticity). Also, since Salmon teaches the sale of automobiles, at least the condition of the car would have been included since condition is a factor in the price of a car (for the well known blue book value). Thus, it is maintained that it would have been obvious to have included the verbal subjective information in the combination of Salmon/Sharp since this would have provided a more enhanced auctioning system by providing users with more information in terms of multimedia. Given the teachings of the audio input and type of goods suggested, it should be apparent that any type of relevant information, whether objective or subjective, concerning the product to be brokered is contemplated by Salmon. However, Sharp does specifically include authenticity information. Thus the rejection for these claims should be sustained.


The arguments made on p. 25 concerning manually invoking the auction process is persuasive for claims 152, 158, 164, 170, 176, 182, 188, 194, 200, 206, and 217. The rejection under 35 U.S.C. section 112, first paragraph, is withdrawn for these claims.

Concerning the remaining claims of Group IV, while the examiner agrees that one having ordinary skill in the art at the time of the invention would recognize starting

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the auction immediately, auction start and end times, initiation at a future time, and auction duration as obvious, it is not clear that the appellant had knowledge of these variations since there is no support in the specification for these scheduling variations. The single sentence provided for evidence of support, "[u]ser may manually invoke the auction process, or may schedule the consignment node to execute the auction process" does not mention any of these scheduling applications. The sentence provided for support could easily be interpreted as including other variations such as allowing a user to select a predetermined auction date (only) without providing specific time, duration, or immediate start input. By separately claiming these variations, the appellant is attempting to define different allegedly inventive features. Since these scheduling features are not described as defined in the claims, the 35 U.S.C. section 112, first paragraph should be sustained.

For the above reasons, it is believed that the rejections should be sustained.


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